In the High court of Uttaranchal, at Nainital.

Chapter VIII, Rule 32 (2) (b)
Description of Case.

Criminal Appeal No. 2056 of 2002

Govind Singh Panwar

Vs.
State

Date of Decision: 22nd March, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain, J.

Hon'ble Mr. Justice Rajesh Tandon, J.

- Whether the order/judgment should be Sent for reporters for reporting? (Yes)

- Whether the reporters be allowed to See the judgment? (Yes)

ISB

In the High Court of Uttaranchal at Nainital.

Criminal Appeal No. 2056 of 2001
(Old 2122 of 1987)

Govind Singh Panwar S/o Sardar Singh Panwar
R/o Village Tyunkhar P.S.Patwari Fateru,
Patti Budha Lasya, Tehsil Deoprayag
District Tehri Garhwal …. Appellant.

Versus

State …. Respondent.

Sri L.K. Tiwari, learned counsel for the appellant.
Sri H.C. Pandey, learned A.G.A. for the State.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble Rajesh Tandon, J.

Date: 22th March, 2005

Per: Hon'ble Mr. Justice Irshad Hussain)

Appellant calls in question his conviction and sentence to imprisonment for life under Section 302 I.P.C. as well as under Section 201 I.P.C. per judgment and order dated 18-4-1978 passed by the then Sessions Judge, Tehri Garhwal in Sessions Trial No. A-22 of 1977.

2. The case of the prosecution as disclosed from the F.I.R. and the evidence rendered in the case was that on 23-8-1977 the victim of the case deceased Sadar Singh went missing after he left the village Fateru at about 9 A.M. for village Tyunkhar, Patti Lasya, Tehsil Deoprayag via horticulture garden. He was having a shop at Lambhar as well as at Khijwa which was a hamlet of village Tyunkhar. Informant Murari Singh (P.W.1) who had accompanied his father Sadar Singh upto Fateru in a passenger bus was sent information that his father had not reached his shop at Khijwa. He started making search but without any success. On 1-9-1977 Chandra Singh (P.W.2), a resident of Chirbatia, told the informant that his daughter-in-law Bachan Dei (P.W.4) had seen Sadar Singh and also inquired about his welfare when Sadar Singh was going towards Khijwa on that day while she was collecting grass near the horticulture garden and that soon after appellant Govind Singh also went towards Khijwa side on that way. Receiving this information informant prepared a written

report (Ext.Ka.1) and delivered the same to Circle Patwari, wherein he suspected that his father might have been murdered by the appellant Govind Singh because the appellant was also Involved in a theft committed I n Delhi and police had visited the village for his arrest, It was also disclosed in the F.I.R. that Sadar Singh being an affluent person used to keep money with him and the murder might have been committed while Sadar Singh was some where between the horticulture garden and village Khijwa on that day.

3- On the basis s of the written report Circle Patwari registered a case under Section 302 I.P.C. and he stared making search of the appellant. It proved fruitful when on 4-9-1977 at about 10.40. A.M. the appellant was brought to the Patwari Chauki at Fateru, Patti Budha Lasya by the staff of the Patwari. Appellant was kept under arrest and interrogated. According to prosecution he volunteered to have the dead body of Sadar Singh discovered on his pointing together with other materials which could throw light on the manner of the death of Sadar Singh.

4- It was also the case of the prosecution that at about 12.20 P.M. the Circle Patwari Jabar Singh Negi (P.W.13) followed the appellant Govind Singh with witnesses Nathi Singh P.W.7), Mahendra Singh (P.W.8) and Vikram Singh (P.W. 10) for expected recovery on the pointing of the appellant. The appellant took him and the witnesses to Gad Muniyal about 40 feet away from the village passage leading to Tyunkhar and got discovered the dead body of Sadar Singh lying partially submerged in the water of the God and was concealed by a long wooden log and stones. The Circle Patwari thereafter held inquest on the dead body ands sent it in a sealed bag for post mortem examination. The appellant Govind Singh also led the party to up-stream and at a short distance got recovered from the bushes a bag (material exhibit-1) said to be belonging to deceased Sadar Singh. Thereafter appellant Govind Singh offered to have the knife discovered. He then led the party to his house, went inside the room, opened a box of rice and took out a knife (material exhibit-2) as stained it was sent for chemical examination, but presence of human blood could not be affirmed. Circle Patwari thereafter completed usual

formalities of the investigation and submitted charge sheet (Ex. ka.14)against the appellant on 18-10-1977.

5- Appellant denied the accusations made by the prosecution and pleaded not guilty.

6- To bring home guilt to the appellant, prosecution relied upon the evidence of fourteen witnesses. Informant P.W.1, Murari Singh besides proving the written F.I.R., Ext.ka.1, gave out that his father Sadar Singh had left for Tyunkhar on 23-8-1977 and on receiving the information that his father did not reach the village Tyunkhar he started making search and when he was told by Chandra Singh (P.W.2) that Smt. Bachan Dei had seen his father being followed by appellant Govind Singh on that day, he suspected foul play and then lodged the report with the Circle Patwari on 2-9-1977. P.W.2, Chandra Singh supported the above version of giving information to the informant. P.W.3, Ram Dei testified that appellant Govind Singh stayed with her in the night preceding the day of the incident. P.W.4, Bachan Dei is the daughter-in-law of P.W.2 and she testified what has been mentioned above. P.W.5, Swaroop Singh was examined to corroborate the prosecution claim that Govind Singh was seen in and around the vicinity on the day of the incident. The witness testified that he met the appellant on 7th Gate Bhadon (23-8-1977) at Chirbatia. P.W.6, Chandra Singh S/o Man Singh also supported the claim that deceased Sadar Singh left for Tyunkhar side on 7th Gate Bhadon at about 8.30 A.M. P.W.7, Nathi Singh is the witness of recovery of dead body of Sadar Singh on the pointing of the appellant. He also gave evidence about the recovery of leather bag of Sadar Singh. P.W.8, Mahendra Singh is the witness of recovery of dead body, the bag and the knife. P.W.9, Dr. S.R.P. Mishra performed the post mortem report, Ext. ka.6 As many as eleven ante-mortem incised wounds were found on the various parts of the body and in his opinion the death was caused due to shock and haemorrhage as a result of these injuries. The death, according to him, took place about 1-2 weeks ago. P.W.10, Tri Vikram Singh is the another witness of recovery of dead body and the knife at the instance of the appellant. P.W.11, Dhoom Singh the other son of deceased Sadar Singh testified

that Sadar Singh left for Tyunkhar side on the ill-fated day after taking a sum of Rs. 500/- for sundry expenses. P.W. 12, Madhawa Nand, Naib Nazir of Malkhana, is a formal witness. P.W.14, Sri Shankar Lal Jaiswal had conducted the identification of the leather bag (material exhibit-1) on 6-10-1977. It was identified by P.W.1, P.W. 11 and others collectively . P.W.13, Jabar Singh, the Circle Patwari has investigated the case and he testified about the circumstances in which he got the information and sent his staff for arresting the appellant Govind Singh. He proved various steps taken in the investigation of the case and also the factum of recoveries at the instances of the appellant.

7- No evidence was adduced in defence on behalf of the appellant.

8- As is evident from the facts of the case and the evidence as led in the case, it was a case based on circumstantial evidence. The circumstances relied upon by the prosecution and which according to the learned Sessions Judge, formed a complete chain leading to the only inference of the guilt of the appellant, were as following:-

(1) That on the fateful day, that is, 23-8-1977 the deceased Sadar Singh left Lambhar for Tyunkhar and did not reach that place alive.

(2) That the appellant was soon after seen also going on that way leading to Tyunkhar and that none than the deceased and the accused were seen going by that way towards Tyunkhar.

(3) That a day before the fateful day the appellant was seen in that locality after he came from the jungles and even stayed just for a night before the fateful day in the house of his relation in village Luthiyar.

(4) That the appellant having come from the forest near about the time when the incident took place, he was not seen in and around the locality thereafter and till his arrest on 4-9-1977.

(5) That the dead body of deceased Sadar Singh, his bag and a blood-stained knife were recovered on the basis of the disclosure statement of the appellant on 4-9-1977.

9- Learned counsel for the appellant persuasively argued that all the circumstances put forward have not been satisfactorily proved and further that complete chain of the circumstances to prove the guilt of

the appellant has not been established. He pointed out that there is neither the circumstance of last seen together of the appellant and the deceased, nor any disclosure statement leading to the alleged recoveries has been proved as contemplated under Section 27 of the Indian Evidence Act and further that the evidence of the prosecution itself indicate that after the dead body of deceased Sadar Singh had been found and seen by hundreds of persons of the locality, the case was fabricated against the appellant after due consultations and deliberations with the Circle Patwari. On the other hand learned A.G.A. submitted that each and every circumstance having been established by the evidence made a complete chain of events to lead to the only inference that none other than the appellant has been guilty of the offence of murder of the deceased.

10- It need to be pointed out at the out set that it is settled that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must have been done by the accused.

11- Keeping in view the settled law relating to circumstantial evidence, we proceed to consider as to whether the circumstances relied upon by the prosecution have been satisfactorily proved or not.

12- As regards the first circumstance is concerned, it is proved from the evidence of informant. Murari Singh (P.W.1) that his father deceased Sadar Singh left Lambhar for Tyunkhar on the fateful day while carrying a bag and an umbrella and thereafter he was not seen alive. At the time of the argument learned counsel of the appellant did not seriously challenge the evidence of the informant in that regard.

13- So far as the second circumstance is concerned, it need to be stated that on the fateful day deceased Sadar Singh and the appellant

were admittedly not seen together near about the time when the deceased met his homicidal death. The mere alleged circumstance that the appellant was seen following deceased Sadar Singh on that very way on which deceased Sadar Singh had gone towards Tyunkhar about five minutes before, does not appear to be of any consequence in the face of the fact that the two were not seen together some time before the death of the deceased. In regard to the circumstance, the evidence of Bachan Dei (P.W.4) was considered by the learned Sessions Judge and it was inferred that this lady while collecting grass near the horticulture garden situate on that way saw deceased Sadar Singh going towards Tyunkhar at about 10.00 A.M. on the fateful day and after about five minutes the appellant was also seen going that way and that none other than these two were seen by her prosecuting the way leading to Tyunkhar. As is evident from the evidence of this witness and also as shown in the site-plan, Ext. Ka.10, the public path way or village passage on which the horticulture garden is situate runs north-south and the village passage leads to different place both in the north as well as in the south. Therefore, village people or any outsider can prosecute this village passage for going towards north as well as towards south to their destinations and it is of significance that the prosecution did not adduce any evidence to the effect that on the fateful day none was seen coming from the opposite direction and who could have met or intercepted the other person such deceased Sadar Singh also prosecuting the same village passage from the opposite direction. Even otherwise the evidence of Bachan Dei failed to repose confidence in the claim that on that day none other than the deceased Sadar Singh and the appellant went on that way towards Tyunkhar, particularly when it is one of the main village passage and small village and markets are situated both towards north and south of the passage, besides a horticulture garden situate on the way itself where the workers employed to maintain the garden were most probably expected to be there working in the garden during the day hours and in the process going through that way on either side of the passage. Another aspect of the matter is that she told all about it to her father-in-law after about eight or nine days when according to her news spread that Sadar Singh is missing and is not traceable since

23-8-1977. It appear that to make it sure that appellant was seen in and around the village of the incident on the fateful day the witness was picked up with a view to make it appear that she is a natural witness in view of her routine to move out in order to collect grass, a fodder for the cattle, from near the horticulture garden, but in the totality of the circumstances of the case, we are of the view that learned Sessions Judge made an error in placing implicit reliance on her evidence and to hold that none other than the appellant on the fateful day went on the passage leading to village Tyunkhar after some time following the deceased Sadar Singh, who was thereafter not found alive. There can be no gain saying that the evidence not being of seeing the appellant and the deceased together the evidence should not have been taken to prove any incriminating circumstance against the appellant.

14- As regards the third circumstance is concerned, again the evidence is of no consequence because even if it is believed that as stated by Smt. Bachan Dei (P.W.4) that the appellant met her near village Luthiyag a day before the fateful day, it would not indicate that he could have been the only person who laid his hand upon the deceased to rob the said victim of cash and then to cause victim's death to avoid surfacing his name in the commission of the offence. Likewise the evidence of another lady Smt. Ram Dei (P.W.3) who claimed that probably a day prior to the fateful day appellant stayed with her in village Luthiyag, could have also not been taken to establish the incriminating circumstance against the appellant and to infer that since he was in that locality a day before the fateful day, his presence there establish a link in the chain of circumstance leading to the inference that none other than the appellant was responsible for committing the murder of the deceased Sadar Singh. In our considered view the evidence of this witness also could not have been taken to prove any incriminating circumstance or a link in the chain of the circumstances leading to the inference of his guilt. The reasoning also hold good in regard to the fourth circumstance the that the appellant was not seen thereafter in and around the locality where the incident took place and the dead body of the deceased was later on recovered. It is not one of those cases in which the culprit lastly seen together

with the victim was thereafter absconding and got to be arrested when the evidence against him came to light or such person's involvement came to surface by the attending circumstances and the available evidence. Here it shall not be out of place to mention that there is no evidence to the effect that the appellant remained in hiding away from his usual place of abode or employment and got to be arrested when his name figured as a suspect in the F.I.R. filed on 2-9-1977 after nine days of the incident. This appears to be the reason that the appellant when summoned by the Circle Patwari Jabar Singh Nigi (P.W.13) through the peon he reported with the peon at the Patwari Chauki at 10.40 A.M. on 4.9.1977 and till then he was not under arrest. P.W.13 also gave out that after the appellant reached his chauki the appellant was interrogated and thereafter was arrested. This way we are not inclined to believe and find favour with the inference drawn by the learned Sessions Judge that after the incident the appellant was absconding and his conduct is a piece of circumstance and a link in the chain of the circumstances leading to establish his guilt. We are of considered view that these two circumstances have also not satisfactorily been proved against the appellant.

15- As regards the recovery of the dead body etc as contemplated under Section 27 of the Evidence Act, it is of significance that the extract of alleged confessional statement of the appellant leading to the discovery of the dead body, deceased's bag and knife the alleged weapon of the murder have not been incorporated either in the General Diary of the Circle Patwari (P.W.13) or in any of the three memorandums, Ext.ka.2, Ext.ka.4 and Ext.ka.5 pertaining to dead body, bag and knife respectively. This is the reason that the learned Sessions Judge has also not referred to any such document in that regard and confined the discussion in regard to the recovery with reference to the oral evidence of alleged witnesses of recovery. They are P.W.7, Nathi Singh, P.W.8, Mahendra Singh, P.W.10, Tri Vikram Singh and P.W.13, Jabar Singh Negi, Patwari. In view of this it is to be seen whether the information given by the appellant and which has not been recorded, stand proved by the oral evidence adduced in the case. It need to be stated here that the Apex Court in the matter of

Bodh Raj alias Bodha and others versus State of Jammu and Kashmir; A.I.R. 2002 Supreme Court 3164 reiterated that :-

> "The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus what is admissible being the information, the same has to be proved and not the opinion formed on it by the Policy Officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is therefore necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced during the evidence……Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given."

16- Learned counsel for the appellant also placed reliance on another decision of the Apex Court reported in 2004 (10) Supreme Court cases 657; Anter Singh versus State of Rajasthan to bring home his point of view that the most important condition of the provision under Section 27 of the Evidence Act is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admission and then to contend that in the instant case no information whatsoever or disclosure statement of the appellant has been proved and therefore, the evidence of recovery of the dead body etc at the alleged instance of the appellant is of no legal consequence.

17- Coming to the oral evidence in the above legal background , we would like to refer to the statement of Circle Patwari, the Investigating Officer, Jabar Singh (P.W.13) first of all. The actual statement in regard to the recovery on the disclosure statement of the appellant is as below:-

> "4&9&77 dks lqcg 10-40 cts eqyfte xksfcUn flag pijklh ds lkFk pkSdh ij gkftj vk;kaA eSus mlls iwNrkN fd;kA mls fxjQrkj fd;ka
>
> 12-20 Fks vkxs vkxs eqyfte o mlds ihNs eSa rFkk vU; C;fDr LFkku xkM dk eqfu;ky igqWpsA eqyfte us tkdj yka"k ls iRFkj

gVkdj yk”k fn[kkbZA ;g yk”k e`rd lnj flag dh FkhA yk”k xkM eqfu;ky ikuh ds x/ksjs esa ydMh o iRFkj ds chp IkRFkjksa ls nch FkhA eSusa QnZ cukbZA og izn”kZ d& 2 gSA esjs gLrk{kj dh fy[kh o nLrdkjh gSA xokgku us esjs lkeus QnZ ij nLr[kr fd;saA”

18- From above statement of the examination-in-chief it is evident that the Investigating Officer does not speak of any information or discovery statement given to him, leading to discovery of the dead body. There is also nothing in the cross examination, which may in any way could have salvaged the situation to prove the necessary ingredient of the legal provision.

19- As regards the public witnesses Nathi Singh (P.W.7), Mahendra Singh (P.W.8) and Tri Vikram Singh (P.W.10) are concerned, it is also evident from their evidence that none of them claimed that appellant, in their presence, gave out to the Circle Patwari that he had concealed the dead body of the deceased and could led them to effect the recovery. The witnesses gave evidence to the effect that the appellant led them to the place where the dead body of the deceased Sadar Singh was laying submerged in water in Gad Muniyal beneath a wooden log and stones. They have not been categorical in asserting about the disclosure statement leading to recovery and therefore we do not think that the argument of the learned counsel for the appellant that the prosecution evidence failed to fulfill the legal requirement of Section 27 of the Evidence Act, could be said to be unsustainable. In fact the submission of the learned counsel find support from the reported decisions cited at the bar.

20- Learned Sessions Judge has adverted to decision of the Apex Court in the matter of Mohd. Inaiyatulla versus State of Maharashtra; 1976 Supreme Court 483 to contend that the necessary ingredients of recovery at the instance of the appellant stand established as firstly there has been recovery of physical object (the dead body of the deceased), secondly the discovery of the place from which the physical object was produced (Gad Muniyal) and thirdly the knowledge of the appellant to this (appellant led the party to the place where the dead body was lying). We have also gone through this

reported decision but we are not convinced that the legal requirements

of the disclosure statement leading to the recovery were satisfied by the evidence of the prosecution in this case. When there has not been any disclosure statement or information coming from the appellant when interrogated, and since the basis idea behind the provision of Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events, the mere fact that appellant led the party to the place where the dead body was lying, could not be said to be the recovery as a result of disclosure statement or information coming from the appellant. The Apex Court decision adverted to by the learned Sessions Judge was also came to be considered by the Apex Court in the decision referred by us above (A.I.R. 2002 Supreme Court 3164) and it had been reiterated that recovery of an object merely is not discovery of fact envisaged in this Section. It was thus observed by the Apex Court that 'the basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information must be confessional or non- inculpatory in nature but if it result in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in this section. Considering in this legal background we are of the firm view that complete lack of evidence to the effect that the appellant confessed or gave information that the dead body had been concealed by him and as a result of his information the recovery was effected, indicate that the discovery of fact as envisaged in Section 27 of the Evidence Act has not been established and the learned Sessions Judge fell in error in holding that the dead body of Sadar Singh had been recovered as a result of the disclosure statement of the appellant.

21- There can be no gain saying that the evidence of the witnesses of the prosecution named above also stand on the same footing in regard to the alleged recovery of the bag of the deceased Sadar Singh and the knife from the house of the appellant. Even otherwise the

recovery of knife does not assume any importance as the same was, as a result of chemical examination, not found to have blood of human origin.

22- The recovery aspect may also be considered by another angle. All the witnesses of the recovery including the Investigating Officer admitted presence of about 150-200 people at the place of the recovery of the dead body. These people went from Chirbatia to the place of the recovery, situate at a distance of more than three kilometers. Learned counsel for the appellant submitted that the recovery witnessed by such a large number of people create doubt because such a large gathering can not remain present at the place of the recovery unless they have already come to know that there is going to be the recovery of the dead body etc. In support of the submission learned counsel placed reliance on a decision of the Apex Court in the matter of Babu Das versus State of M.P. 2003 A.I.R. S.C.W. 2483. In the case before the Apex Court, the evidence that had been accepted by the High Court against the appellant of the case, merely pertain to the recovery which was effected in the presence of thousands of people. The recovery in the presence of such large gathering was held to be doubtful. It was thus observed that it is extremely difficult that such a large gathering may be present at the place of recovery unless people in the village had already come to know that there is going to be such a recovery. Considering the peculiar facts of the case we also find it difficult to believe that in a hilly terrain where the small villages are sparsely located not having much population, people numbering about 150-200 would assemble at the place of the recovery of the dead body unless they already had come to know that there is going to be such a recovery. In a situation like this the alleged recovery at the instance of the appellant create grave doubt and therefore we find it safe to say that the submission made by the learned counsel for the appellant in that regard is also sustainable.

23- Further it is the case of the prosecution that the dead body of the deceased was kept and sealed in a wooden box after inquest and was sent for post mortem. P.W.13, Jabar Singh Negi, the Investigating

Officer was, in cross-examination suggested that when he started from Chirbatia for alleged recovery, a wooden box was taken from the

informant for keeping the dead body. He denied to the suggestion and gave out that some people were sent after recovery of the dead body to bring wooden planks and the wooden box was thereafter prepared at the place of the recovery of the dead body. He could not tell the names of those persons who were sent to fetch the wooden planks. According to him the recovery had been effected at about 3 P.M. and the inquest was completed by 6 P.M. It does not appear probable that after recovery of the dead body few persons were deputed to collect wooden planks from some where else and then to prepare a wooden box for keeping the dead body of the deceased and then to send the said box duly sealed from there for post mortem of the dead body. Public witness P.W.10, Tri Vikram Singh could not say as to how the wooden box came to be prepared at the place of the recovery of the dead body, but stated that he had seen the box at the spot, but denied that the same was brought from Chirbatia when the party started from Patwari Chauki via Charlatan to have the dead body recovered at the instance of the appellant. In fact the evidence of this witness also does not show that the wooden box came to be prepared after recovery of the dead body and that too after procuring the wooden planks from else where. The evidence of Mehendra Singh (P.W.8) is also quite shaky and discrepant in that regard as he stated that Patwari procured the wooden planks for making wooden box but could not tell as to who brought the wooden planks at the place of the recovery. He gave out that wooden box was made by carpenter of village Bhirani, a place situate at a distance of about 4-5 miles from the ravine, the place of the recovery of the dead body. It does not appear probable that in such a short period a carpenter could have been summoned from such a long distance and wooden box could have been prepared after procuring the wooden planks to keep the dead body of the deceased. The other witness Nathi Singh (P.W.7) also gave ambiguous reply in regard to the procurement and making of the wooden box there at the place of the recovery of the dead body and could not tell as to who brought wooden planks there to have the box prepared to keep the dead body. In the face of the discrepant evidence

of the witnesses the suggestion given to the Patwari carry meaning to indicate that these witnesses and large gathering of the

people had already come to know that there is going to be recovery of the dead body and they therefore took with them a wooden box to keep the dead body of the deceased for being taken from the ravine known as Gad Muniyal. This aspect therefore also create grave suspicion and doubt in the claim of the prosecution about the manner of the recovery of the dead body and other articles at the instance of the appellant. The learned Sessions Judge had not taken note of the peculiar aspect of the case and merely on the basis of the evidence that the appellant allegedly led the party to have the dead body of the deceased recovered, placed implicit reliance on the evidence to come to the conclusion that the recovery was at the instance of the accused. In the face of the facts of the case and the evidence on record we find it extremely difficult to believe and accept that the recovery of the dead body and other articles was the result of disclosure statement of the appellant or that the recovery was at his instance.

24- This way we find that the last circumstance also does not stand established legally. In other words the circumstances relied upon by the prosecution have not been established by the evidence of the prosecution and there being no chain of circumstances to prove the guilt of the appellant, he could not have been held responsible for committing the murder of deceased Sadar Singh. Therefore, the judgment of conviction and sentence passed by the learned Sessions Judge can not be legally maintained and the same is liable to be set aside.

25- The appeal is allowed. The appellant Goving Singh Panwar is held not guilty and acquitted of the charge under Sections 302/201 I.P.C. and the judgment dated 18-4-1978 passed by the then Sessions Judge, Tehri Garhwal convicting the appellant and sentencing him to imprisonment for life under Sections 302/201 I.P.C. is set aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

(Rajesh Tandon, J.) **(Irshad Hussain, J.)**

ISB